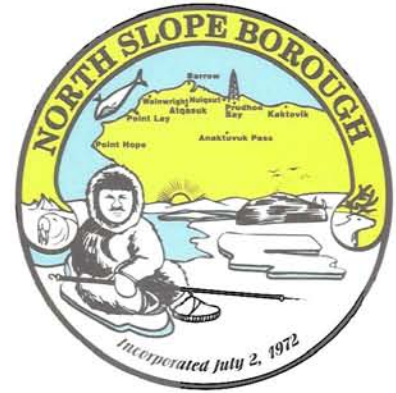


North Slope Borough

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George N. Ahmaogak, Sr., Mayor

November 1, 2005

Mr. Eldon Hout
Coastal Programs Division
Office of Ocean and Coastal Resource Management (OCRM)
NOA/NOAA, SSMC4 N/ORM3 Room 11207
1305 East-West Highway
Silver Spring, MD 20910

Submitted Via Fax: 301-713-4367 to the OCRM

RE: ALASKA COASTAL MANAGEMENT PROGRAM DRAFT EIS COMMENTS

Dear Mr. Hout:

The North Slope Borough appreciates this opportunity to offer comments to the Office of Ocean and Coastal Resource Management (OCRM), on its Draft Environmental Impact Statement (DEIS) for Review of Amendments to the Alaska Coastal Management Program (ACMP). We provided comments to OCRM previously on the effects of the changes to the ACMP, including comments about the scope of the EIS submitted during the scoping period.

In Volume I, Chapter 6, Affected Environment, the DEIS contains a wealth of information about Alaska. The analysis of the effects of the program changes is inadequate, and the reasonably foreseeable effects from the ACMP changes do not support the preferred alternative. NOAA's preferred alternative is to approve the State of Alaska's request to incorporate changes to ACMP statutes and regulations.

OCRM states it "has determined that the majority of changes proposed under the ACMP's program changes are likely to result in neutral effects to the physical environment relative to the pre-amendment ACMP." We believe that this conclusion is not supported by our analysis of changes to ACMP statutes and regulations, the June 2, 2005 Department of Natural Resources: The Alaska Coastal Management Program, As Amended (the Amendment) and other documents prepared by the Alaska Department of Natural Resources (ADNR).

The NSB understands OCRM's interest in responding to the January 1, 2006 deadline established by the Alaska State Legislature in Senate Bill (SB) 102. An artificial deadline imposed by the State of Alaska, however, is not an adequate justification for completing an inadequate analysis of the effects of the changes to the ACMP. This letter provides information about how the DEIS has not met the requirements of the National Environmental Policy Act (NEPA) and Executive Order (EO) 12898 regarding Environmental Justice. Also, we believe that Endangered Species Act and government-to-government consultations should have been completed before establishing an agency-preferred alternative. Federal regulations specifically require that an EIS assess impacts, "rather than justifying decisions already made" (40 CFR 1502.2(g)).

In the DEIS, OCRM states that the "scope of changes represents one of the most comprehensive changes to a state coastal program in the history of the CZMA." Given this fact, we believe a more thorough analysis of the potential effects of the proposed changes to the ACMP must be completed. This analysis should include a comprehensive investigation of the reasonably foreseeable effects including:

- A description of which district enforceable policies will no longer be approvable;
- A "gaps analysis" that discloses which of those policies are not adequately addressed by state or federal law;
- A comparison of Alaska's environmental laws to that of other coastal states to determine the importance of the ACMP in Alaska;
- District programs and Areas Meriting Special Attention (AMSA) that will lapse in March 2007;
- A more complete analysis of the Amendment and areas where policy is unclear or conflicting; and
- A more complete analysis of the cumulative impacts as a result of the changes.

North Slope Borough residents have a close relationship to the land and water, and they depend on subsistence hunting and fishing for their survival. The changes to the ACMP, however, appear to greatly affect our ability to participate meaningfully in reviews of activities that could affect us.

We respectfully request that OCRM extend the comment deadline for the DEIS until some outstanding questions are answered and until OCRM completes its government-to-government and Endangered Species Act consultations. A great uncertainty exists about the effects of the changes to the ACMP on the ability of the state and coastal districts to review activities on the Outer Continental Shelf (OCS). The North Slope Borough posed a number of questions to Alaska Department of Natural Resources (ADNR) staff about OCS reviews on September 1, 2005. Unfortunately, the staff was able to answer only a few of our questions at that meeting. The comment period on the DEIS should be extended to allow enough time to incorporate the answers to those questions once they are received from the ADNR.

The remainder of this letter provides specific information about potential effects to the human environment and how these effects are inadequately addressed in the DEIS. The major topics addressed in this letter include alternatives, inadequate analysis, government-to-government consultations, environmental justice, and the conclusion.

ALTERNATIVES

Preferred Alternative

OCRM has concluded that "the majority of changes are likely to result in neutral effects to the physical environment" (Volume I, Summary & Conclusions Section 10.1.1) and that the effects to socio-economic resources will result in a more efficient program with great clarity and financial savings. The DEIS does not recognize the severity of negative effects to the physical environment or the social, cultural, and economic resources.

The conclusion that most of the changes will result in neutral effects appears to be based on an inadequate analysis of the likely impacts of the proposed changes to the ACMP. The DEIS does not describe the methods used by OCRM to analyze the potential effects of the changes, and it appears that OCRM simply relied on statements by the State of Alaska in the Amendment without doing an independent analysis of the effects.

While the DEIS describes benefits from new ACMP streamlining provisions, it does not recognize potential difficulties to project approvals from the changes. For example, the inability to write enforceable policies will encourage some municipalities to strengthen or establish local permitting programs. This could result in project delays. In addition, litigation may increase as a result of disenfranchised local governments.

In several sections of the DEIS, OCRM's justification of its preferred alternative is that the most likely result of disapproving the ACMP changes would be the repeal of the ACMP. The DEIS does not provide an adequate basis for this statement. In fact, one could argue that it is most likely that if OCRM were to disapprove some of the proposed changes that the State Legislature would respond with legislation before the sunset date of May 20, 2006. The Legislature purposely chose the last day of the legislative session for the sunset date so it would have an entire session to respond to any changes required by OCRM.

The justification for selection of the preferred alternative is based, in part, on OCRM's assertion that it will allow continued application of the ACMP, including state standards and coastal district programs. While districts would technically continue under the proposed changes, comments received on the Public Review Draft of the NSB plan indicate that ADNR does not intend to approve any meaningful enforceable policies. On page 152 of the DEIS, OCRM states that disapproval of the ACMP changes may result in the "physical deterioration of natural resources" and "deterioration of the management of

important coastal uses such as subsistence use.” We believe that the preferred alternative will lead to the same result.

Additional Alternative

The CEQ NEPA regulations require agencies to “rigorously explore and objectively evaluate all reasonable alternatives” (40 CFR 1502.14). The DEIS does not meet this requirement because it effectively only analyzes two alternatives: Approving the AMCP (Alternative 1) and disapproving it (Alternative 3). OCRM has found that the “no action” alternative (Alternative 2) would have the same effect as Alternative 3.

We request that OCRM add a fourth alternative to the final EIS that would approve some of the changes while disapproving others. We believe OCRM will understand the value of selecting this new alternative as the preferred alternative after it completes a more thorough analysis of the effects of the changes to the human environment. This new alternative would not include approval of proposed ACMP changes that would have significant adverse impacts to the human environment. Selection of this alternative for the agency preferred alternative would allow the ACMP to continue.

INADEQUATE ANALYSIS

The specific methodology used by OCRM to determine the effects of the proposed changes to the ACMP is not identified in the DEIS. Other than repeating information in the June 2, 2005 Amendment request prepared by the State of Alaska and referencing scoping comments, there is no indication that other documents were consulted in preparation of the effects analysis. It appears that there was no analysis of the specific effects of a loss of enforceable policies and which of those policies are not adequately addressed by state or federal law.

In Section 7.2, the DEIS states that “[m]any of the effects of approving or denying amendments to the ACMP are difficult to analyze because they are secondary and dependent on separate, future, discretionary actions by a variety of entities . . .” Uncertainty should not be an excuse for analyzing available documents that would provide useful information about the effects of the changes. A more thorough analysis would involve a comprehensive, objective analysis of the Amendment, including unclear and conflicting statements. It would also include an analysis of ADNR comments on Public Review Drafts of district plans, answers to the October 2004 workshop questions, and answers from ADNR to questions posed by the North Slope Borough (not yet available).

Conflicting Information in the Amendment Request

The DEIS should be expanded to include a more thorough analysis of the June 2, 2005 Amendment request. The effects of the changes to the ACMP proposed by the State are

complex and often subtle. We will provide a few examples of how the Amendment includes inconsistencies, unclear language and inaccurate information.

- A number of changes to the regulations are not reflected in the Amendment, such as several areas stating that district policies established for a designated area only apply in that designated area.
- In one place, ADNOR states that it will work with Canada in the future if it were to develop a coastal management program. Canada has implemented coastal management through its Oceans Act since 1997.
- The discussion of OCS reviews does not precisely describe what activities will be included in the state's ACMP review and how it coordinates with the Alaska Department of Environmental Conservation (ADEC).
- The discussion of what is or not allowed for district enforceable policies is especially confusing.

Because this document will likely provide ACMP guidance for many years, a thorough review by OCRM will likely reveal additional areas that need to be rewritten.

Cumulative Impacts

In Volume I Section 7.1 of the DEIS, OCRM recognizes that the changes to the ACMP may have cumulative effects and secondary impacts on the environment. Although it states that the discussion of environmental effects will cover secondary and cumulative effects, such an analysis is not included in the EIS. Cumulative impacts are briefly addressed in four other areas of the EIS, but these discussions do not include an adequate analysis. The first reference simply says the State should be able to determine cumulative impacts in later reviews of phased projects (Section 7.3.1.4). The second reference recognizes there may be cumulative impacts to subsistence resources, but these impacts are not described or analyzed (Section 7.4.6.1). The third reference only mentions cumulative impacts of small-scale projects, again without any analysis (Section 7.5.3.2). Lastly, a small section of the Scoping Report summarizes comments about the need to do an analysis of cumulative impacts (Appendix B). However, OCRM chose not to implement these suggestions.

Under the NEPA and the CEQ guidelines, OCRM is obligated to consider the impacts of cumulative actions "which when viewed with other proposed actions have cumulatively significant impacts" (40 CFR 1508.25). In addition to analyzing the cumulative impacts of the changes to the ACMP proposed by the state, the analysis should also address other reasonably foreseeable effects to the ACMP including ADNOR's consideration of changing funding allocations and the legislative proposal before Congress that would limit reviews of federal activities inland of the coastal zone to those with a direct and significant impact.

Boundaries

Section 5.2.3.2.1 states that changes to 11 AAC 114.220 do not affect the designation of a district's boundary. We believe that replacement of "marine coastal waters" with the term

“coastal waters” will affect the ability of a district to change its boundaries. The definition of the term “marine coastal waters” included a broader scope because it included the words “and the living resources that are dependent on these bodies of water.” The importance of considering living resources in creation of the original ACMP boundaries is explained on page 14 of the June 2, 2005 Amendment. The final EIS should include an analysis of this change.

Concentration of Power

In Section 7.3.1.1, OCRM states that the Office of Project Management and Permitting’s (OPMP) assumption of ACMP duties would have neutral effects. This assertion should be supported by an additional analysis of the effects of this change as well as the cumulative effects of other organizational changes. These changes include elimination of the Coastal Policy Council, movement of the former Habitat Division to ADNR, and changes to the “elevation” process. These changes are likely to have environmental effects because they remove “checks and balances” of the program. As well, organizational changes have led to almost a complete change in personnel in the OPMP that results in a loss of institutional knowledge about the ACMP. Section 5.2.3.1, should be reworded to state that the Alaska Department of Commerce, Community and Economic Development is responsible for community planning rather than ADNR.

Public Participation

The DEIS analysis of the effects on the proposed changes to public involvement is inadequate. In Section 5.2.2.2, OCRM includes a very brief discussion of public participation stating that additional aspects will be analyzed in other sections of the DEIS. To understand the cumulative effects of the changes on the public’s ability to participate in the ACMP, all of the changes affecting participation should be analyzed in one section and address the following issues.

- There are no opportunities for public comment on air and water quality issues for OCS reviews and projects on federal land that do not require an ADEC permit.
- AS 46.40.096(m) requires ADNR to establish lists of categorically consistent and generally consistent activities “as broad as possible so as to minimize the number of projects that must undergo an individual consistency review . . .” This action will reduce the number of projects that undergo public review.
- Changes to AS 46.40.096(k) and (l) eliminate the possibility for ACMP reviews, including public comment, for projects located inland of the coastal zone.
- Organizational changes will reduce opportunities for public comment including elimination of the Coastal Policy Council and the transference of the ACMP and the Office of Habitat Management and Permitting to the ADNR.
- The elimination of ACMP reviews for shallow gas projects will remove opportunities for public comment.
- Since some agencies do not have a public notice requirement for their permits, there will be no opportunity for public comment on projects that no longer

undergo ACMP reviews. For example, even though agencies often issue public notices, they are not always required to do so (e.g., many ADNR permits).

In addition, elimination of the ability of citizens to initiate third-party lawsuits will remove an important element of public involvement from the ACMP. In Section 7.3.1.6, the DEIS states that the elimination of third-party lawsuits will have a neutral effect on state's physical resources. OCRM asserts that those parties with a meaningful interest will still have standing to sue. This assertion implies that tribal governments, local communities and residents of a coastal district do not have a "meaningful interest" in the outcome of an ACMP review. Without the "check and balance" provided by a potential lawsuit, agencies will be tempted to "cut corners." The basis for the statement in the last sentence of Section 7.3.1.6 that "third parties with concerns about some projects would be able to seek redress through the State courts" needs to be supported. As we understand it, HB 86 eliminated this possibility.

Statewide Standards and District Enforceable Policies

The DEIS states that the statewide standards have been rewritten to avoid redundancy, provide greater clarity, and in some cases to provide a more comprehensive coverage. This analysis reflects an insufficient understanding of the effects of changes to the statewide standards. We believe the changes to the statewide standards will result in elimination of significant activities from ACMP reviews and in many cases, a lack of clarity of what is to be considered in the review.

Natural Hazards: In Section 5.2.2.4, OCRM states that the new Natural Hazards standard is "more expansive than the original program's requirements," and Section 7.4.1 states that the changes "may have a positive effect on the physical environment." These statements do not adequately assess the effects of the changes. Under the former standard, all natural hazards could be considered, districts policies were not prohibited, and districts had a seat at the table during discussions about natural hazards. The new standard eliminates the ability of districts to provide local or scientific knowledge. Instead, the standard defers to an applicant's engineer. In addition, the new definition of hazards omits permafrost as a hazard, one of the most widespread and critical hazards. According to comments received on the NSB plan, ADNR has stated that there is insufficient information to designate permafrost as a hazard. These comments are disturbing because scientists recognize permafrost as a hazard, and the entire North Slope Borough has continuous permafrost coverage. While the borough could address permafrost in its land use regulations, coastal resource service areas do not have this option.

Habitats: Section 7.4.7.1 states that the changes "may have a neutral effect . . . depending on how the designation of 'important habitats' is ultimately implemented." This statement is not supported by fact. Section 5.2.2.12.3 recognizes that changes to the statewide Habitats standard will result in a more limited list of habitat values that will be reviewed for consistency with the ACMP. It states that a more holistic approach is

required for “important habitat“. The discussion does adequately address other restrictions, however, including the difficulty in establishing important habitat areas and the lack of state and federal regulations to cover gaps lost from former district policies. In addition, the discussion does not address DNR’s position that districts may not establish policies for habitat issues because of the “avoid, minimize and mitigate” process and the “flow from” concept. The new restrictions make it important for the DEIS to address all of the changes to this standard.

Section 5.2.2.12.10 addresses the removal of upland habitat from the Habitats standard. OCRM states “other state and federal laws continue to address upland habitats . . .”

Section 7.4.7.1 says the State has established a comprehensive management scheme for coastal habitat. These statements are not based on a complete analysis of state and federal laws and do not recognize that many state laws only apply to state land and that the ADNR Office of Habitat Management and Permitting only regulates certain water bodies. Section 7.4.8 incorrectly states that the ACMP still addresses “upland habitat, which is defined at 6 AAC 80.900(15) . . .”

Mining: Section 7.4.5 states that removing mining from the new statewide standard for sand and gravel would have a neutral effect. Again, this assertion is based on an incomplete analysis of state and federal laws. Also, comments on the Public Review Drafts of district plans reveal that ADNR may not approve meaningful enforceable policies that could address mining activities.

Coastal Access: The discussion in Section 7.4.2 on coastal access states that the changes would have a neutral effect. The discussion does not support this assertion because it acknowledges the new standard will apply to an “unquantified smaller area.” The new definition of coastal water will likely substantially limit the access provisions of the former recreation standard.

Energy Facilities: The discussion in 7.4.3 on the Energy Facilities standard omits two important considerations. First, according to ADNR, the new definition does not address seismic surveys and therefore these activities would no longer be reviewed under this standard. Seismic surveys have had significant effects on bowhead whale migration, and the ACMP has been an important tool for the NSB to protect subsistence whaling activities. Second, the discussion in Section 7.4.3.1.1 does not support the assertion that there would be neutral effects of replacing the term “feasible and prudent” with the term “practicable.” While the term feasible and prudent included consideration of social and environmental effects, the term “practicable” does not.

Utility Routes and Facilities: The discussion in Section 7.4.4 that there would be neutral effects is not supported by an adequate analysis. The new standards that replace this standard are limited to certain activities and a more limited geographic application (Utility Routes and Facilities and Transportation Routes and Facilities standards).

Avoid, Minimize and Mitigate: The “avoid, minimize and mitigate” sequencing process in 11 AAC 112.900 is not adequately addressed in the DEIS. Since there is no definition for the term “minimize,” it appears that mitigation would seldom if ever be required because an applicant would only have to demonstrate that it attempted to minimize impacts. The discussion of this topic in Section 5.2.2.14 should be expanded to analyze how this concept will affect reviews of impacts to coastal resources and uses. The implications of the sequencing process for district enforceable policies are addressed in the next section.

Subsistence: Changes to the statewide standard limit application of where enforceable policies apply, limit what effects may be considered, and remove the ability to mitigate effects. Subsistence issues are discussed in more detail in a separate section below.

District Enforceable Policies: The DEIS recognizes that the changes to the ACMP will reduce the ability of coastal districts to establish enforceable policies. The document, however, does not provide an adequate analysis of how enforceable policies are limited, which enforceable policies will no longer be approvable, and what matters addressed in these policies are not adequately addressed in state or federal law.

The final EIS should include a more thorough discussion of concepts that limit enforceable policies. For example the “flow from” concept is only briefly mentioned in Sections 7.4.6.1 and 7.4.2.1. The discussion in Section 7.4.6.1 references Section 5.1.3.25 for more information about the flow from concept, but this section does not exist in the DEIS.

The discussion in Section 5.2.2.14 of the “avoid, minimize or mitigate” concept does not address the implications of this phrase for limiting enforceable policies. According to ADNR, district policies based on statewide standards using the “avoid, minimize or mitigate” term can only “allow or disallow” uses because the sequencing process adequately addresses the matter.

The final EIS should include an expanded analysis in Section 5.2.3.2.5 of how the new regulations restrict district enforceable policies. In addition, the final EIS should include a comprehensive analysis of the effects to the human environment of the loss of district enforceable policies. This analysis should involve a review of ADNR comments on the public review drafts of district plans and a “gaps analysis” that investigates which of these policies is not adequately addressed by state and federal law.

Subsistence

Section 7.4.6.1 states that there may be negative impacts to subsistence from the proposed changes, but also states “this may be offset by the continued requirements of other federal and state subsistence laws and program requirements.” At the conclusion of this section, OCRM states that “other federal and state agencies are required and do take subsistence into consideration as part of their planning and permitting processes, and this

would serve as a mitigating measure.” We believe these statements and the analysis of state and federal regulations are incomplete and misleading.

The Federal Subsistence Board only has jurisdiction for lands covered by the Alaska National Interest Lands Conservation Act (ANILCA) as outlined in Title VIII of the act. While ANILCA provides the ability to protect subsistence uses, it does not replace the tools formerly available to districts through their enforceable policies, and it does not apply to state land, private land and some federal lands.

The final EIS should clarify that the Alaska Board of Fisheries and the Alaska Board of Game only manage the take of fish and game. Rather than address allocation issues, the ACMP has been an important tool to manage impacts to subsistence uses and resource from development projects and state and federal activities. The Division of Subsistence has no authority other than to conduct subsistence research. As a result, erosion of ACMP subsistence provisions will not be offset by state subsistence laws.

The DEIS contains an incomplete description of ACMP changes that affect subsistence. The cumulative effect of the changes appears to result in the inability of districts to develop any meaningful enforceable policies on subsistence. For example, comments on the NSB Public Review Draft state that its policies may only address what is specifically mentioned in the statewide subsistence standard.

OCRM states that the “State’s revised standards still ensure that districts and State agencies have the opportunity to recognize and assure subsistence usage of coastal areas and resources through the requirements for designation of subsistence areas.” This statement does not reflect comments by ADNR on the Public Review Drafts of the district plans. For example, ADNR stated that NSB policies cannot address access, a subsistence priority or the level of need for subsistence resources.

In addition to restrictions to enforceable policies, the proposed ACMP changes impose other limitations. Previously, subsistence resources and uses could be considered during ACMP reviews, but the new standard only allows consideration of effects to subsistence uses. Subsistence will not be considered during ACMP reviews unless an area is designated for subsistence use. Preliminary comments from ADNR on the Public Review Drafts of the district plans indicate it does not intend to approve all district subsistence designations. As described below, new restrictions on enforceable policies eliminate the ability to address subsistence resources under special area plans.

Recently, ADNR told some districts that they must have separate designations for each type of subsistence. While this new restriction may not seem significant, it will be extremely difficult to definitively map where different types of subsistence uses occur. In fact, most subsistence studies caution use of the information for this type of use.

The DEIS incorrectly states that “State and district policies apply to federal actions located outside designated areas if the federal action will have an effect on subsistence

uses regardless of the location of the federal action or where the effect to subsistence uses occur.” In spite of recent changes to the regulations, AS 46.40.096(k) and (l) do not allow any projects inland of the coastal zone to be reviewed for consistency with the ACMP. Also, it is not clear how the location of a designated subsistence use area will apply to activities on federal lands and waters, especially when the designation is not located adjacent to those lands and waters.

Sections of the final EIS should be rewritten to acknowledge the full effects of ACMP changes to subsistence. In order to do an adequate analysis, OCRM should read and analyze ADNRC comments on Public Review Drafts and do a more complete analysis of which enforceable policies are not adequately addressed by state or federal laws.

Consistency Reviews

A number of changes to the ACMP consistency review process were not adequately analyzed in the EIS. Some of these changes are discussed below.

Scope of Project: Section 5.2.1.3.3 states that the scope of projects subject to federal consistency did not change. Although this statement may be true in theory, it may not be true in practice. As an example, the scope of review for projects that involve Army Corps of Engineers 404 permits and Environmental Protection Agency 402 permits are not clear. For ACMP reviews requiring these permits and a 401 certification from ADEC, ADNRC has not provided clear descriptions of what is subject to the ACMP review.

In Section 5.2.3.2.3, the DEIS states that “under 11 AAC 110.015, State and approved district enforceable policies will apply to federal actions affecting Alaska’s coastal resources, regardless of the location of the federal action where the coastal use or resource is affected.” The final EIS should include an analysis of how this new regulation conflicts with AS 46.40.096(k) and (l) which does not provide for review of any projects inland of the coastal zone, including federal actions.

Section 7.3.1.3 states that changes to the scope of review will have a positive effect on the permitting process. This statement does not take into account the uncertainty regarding the scope of ACMP reviews. Additionally, the analysis does not adequately address the environmental effects of limitations to the scope of review from other changes such as limiting reviews to activities addressed in permits and removal of activities regulated by ADEC from the ACMP consistency review.

Coastal Waters: The discussion of the redefinition of coastal waters in Section 5.2.2.1 neglects to mention an important change from the definition of marine coastal water in 6 AAC 85.900(17). The previous definition included the phrase “and the living resources that depend on these bodies of waters.” The final EIS should analyze the effects of these changes, especially to the boundaries section in 11 AAC 114.220.

Categorically Consistent and Generally Consistent Activities: AS 46.40.096(m) requires ADNOR to establish lists of categorically consistent (“A List”) and generally consistent (“B” List) activities “as broad as possible so as to minimize the number of projects that must undergo an individual consistency review . . .” This statute requires inclusion of activities on these lists without regard of whether they are *de minimus* in nature. It is reasonably foreseeable that future changes to these lists will significantly reduce the number and types of projects that will undergo a consistency review.

Section 5.2.1.3.9 of the DEIS states that changes to the A and B Lists are *generally* limited to technical corrections. The DEIS does not specify which changes were not technical in nature.

Phasing: The DEIS states that changes to AS 46.40.094 will have a neutral effect, but the analysis is incomplete and based on an incorrect assumption. The discussions in Sections 5.2.1.3.4 and 7.3.1.4 do not include an adequate analysis of the potential effects of changes to the phasing statute. The DEIS implies that the previous statute only applied to oil and gas projects. While it is true that AS 46.40.094 was written to address phasing oil and gas lease sales, exploration and developing projects, the statute applied to all types of projects.

The DEIS points out that federal CZMA regulations include phasing provisions for review of federal activities, but it omits the fact that this provision does not apply to federally-permitted activities. The changes to AS 46.40.094 may make it easier for applicants to phase projects by not choosing to complete a study. While phasing of some projects may be beneficial, phasing of large projects can be problematic. For instance, the project descriptions for the different phases of the Badami and Alpine development projects on the North Slope were confusing, and it was not possible to determine precisely which activities were reviewed during each phase. The final EIS should include an analysis of the effects of the change to this statute.

Time Limitation: Section 7.3.1.8 states that the new time limitation for ACMP reviews will have a positive effect on permitting. The final EIS should include an analysis of potential problems resulting from the new time limits, especially for large project reviews and OCS reviews. In situations where inadequate project information is available, the time limitations will put state agencies and coastal districts at a disadvantage.

Shallow Gas Exemption: The North Slope Borough recognizes the potential for shallow gas reserves (i.e., coal bed methane) to provide residential and commercial energy needs. In fact, a current investigation is being completed to determine if coal bed methane resources could benefit the community of Wainwright. We believe potential effects of coal bed methane projects can be substantial and should be included in ACMP reviews.

Section 7.6.1.4 states that it is not apparent if the exemption of shallow gas projects from ACMP review will significantly affect the human environment. Section 5.3 summarizes how HB 69 finds shallow natural gas projects automatically consistent with the ACMP.

In Section 7.2, OCRM accepts that State's rationale that shallow natural gas activities are *de minimis* in nature without completing its own analysis. We note that HB 69 does not mention the term "*de minimis*." Experience in Alaska's Matanuska-Susitna Borough and in Colorado, however, suggest that coal bed methane projects have significant impacts. These projects require more wells than conventional gas wells and result in more produced water. An expanded discussion in the final EIS should analyze the potential effects of coal bed methane projects, the environmental effects from excluding them from ACMP reviews, and whether they can be considered to be *de minimis*.

We find it curious that OCRM was unable to determine whether shallow gas projects have been reviewed for consistency in the past. Such projects have been routinely reviewed for consistency, and public meetings held during the ACMP reviews of coal bed methane projects in the Matanuska-Susitna Valley have provided an important avenue for residents to learn more about the projects and comment on them.

In addition to removing shallow gas projects from ACMP reviews, HB 69 includes a provision for a variance from Alaska Oil and Gas Conservation Commission reviews, a waiver from local ordinances, and an exemption from ADEC approvals.

DEC Reviews

Removal of matters regulated by ADEC from ACMP reviews are of great importance to the NSB. For example, the most significant effect from an oil and gas project would be a large offshore oil spill. The ACMP changes remove an important avenue for our review of activities that could significantly affect subsistence and other coastal resources.

The analysis of the effects of removing air and water quality issues from ACMP consistency reviews is not adequately addressed in the DEIS. OCRM has concluded that it is "not apparent at this point whether the DEC carve-out will affect the operation of the ACMP policies or significantly affect the human environment." There is no evidence that this statement is based on a sufficient analysis of the potential effects of the ADEC "carve-out." We believe that OCRM will be compelled to change this finding once it completes a more comprehensive analysis.

Section 5.2.1.3.7 mentions procedures for single agency reviews by ADEC. It is our understanding, however, that no single agency reviews have ever been conducted under these procedures. The final EIS should include an analysis of the ADEC procedures, how they have been implemented, and what activities are no longer reviewed for consistency.

The effects of not reviewing activities related to air and water quality for consistency with enforceable policies was not evaluated in the DEIS. While activities regulated by ADEC must be consistent with the Air, Land and Water Quality standards (i.e., ADEC statutes and regulations), these activities are no longer reviewed for consistency with other stateside standards and district enforceable policies. Considering that "matters" regulated by ADEC include a wide variety of activities with substantial consequences,

significant effects to the environment could result from not reviewing these activities for consistency with the other enforceable policies.

The State has said that districts may not adopt any air, land or water quality policies, even for matters not regulated by ADEC. Although we do not believe that is the intent of HB 191, implementation of this interpretation will likely result in impacts to the human environment. The final EIS should include an analysis of what types of air and water quality related activities will no longer be reviewed for consistency and the subsequent effects to the environment.

The effects of the "ADEC carve-out" related to OCS reviews are discussed in the next section. Briefly stated, we are concerned that there is no opportunity for public comment on ADEC's finding.

The scope of review for projects with 401 certifications by ADEC has been confusing since the passage of HB 191. The final EIS should include an analysis of this issue that includes a review of project descriptions in ACMP review start-up letters and interviews with project reviewers.

Outer Continental Shelf (OCS)

Statements in the DEIS mischaracterize the effects of the proposed changes on reviews of OCS activities. Section 7.3.1.7 states that it is not apparent that the proposed changes to the ACMP will change the level of environmental protection for OCS activities. Section 7.3.1.7.1 (incorrectly numbered 7.3.7.1.1) states that the revised ACMP will not change how the public comments on proposed activities, and Section 7.4.3.1.3 states that the changes will not change how the state comments on OCS reviews. We believe that a more thorough analysis of the proposed changes will reveal that the changes drastically change how the state and the public comments on OCS activities.

As mentioned earlier in this letter, the borough met with ADNR on September 1, 2005 to discuss the content and process for reviews of OCS activities. The questions we posed at that meeting are attached to this letter. While we do not yet have answers to those questions, it appears that the proposed changes to the ACMP will have some unexpected consequences. A few of the issues we raised are discussed below, but a thorough analysis of all of the issues raised in the attachment should be completed in the final EIS.

It appears that the borough will no longer have an opportunity to comment on air or water quality issues for OCS activities because the ADEC does not have a permit, and the ACMP consistency review process does not address air or water quality issues. As a result, there is no opportunity for the borough or its residents to participate in the development of ADEC's finding. In addition, if ADNR continues to assert that districts may not develop any air or water quality enforceable policies, even for matters not regulated by ADEC, there will be no opportunity for the borough to add protections not adequately addressed by state or federal law.

Changes to the statewide ACMP standards will impose significant limitations on the State's ability to comment on OCS projects. For example, changes to the Habitats standard management measures impose new limitations to what can be addressed in offshore areas. A new change that requires designation of subsistence areas in order to address subsistence issues may affect OCS reviews. It is uncertain how the statewide standard or district subsistence policies would be applied to OCS projects, especially for designated subsistence areas in only part of state waters. Another problem relates to ADNR's assertion that the borough may not develop oil and gas policies unless it first designated offshore areas as suitable for energy development. Considering the NSB's longstanding opposition to offshore development, it is not likely to find that offshore waters are suitable for development.

The DEIS incorrectly characterizes reviews of OCS activities by stating that "all OCS activities evaluated under NEPA through MMS' preparation of an EIS and Alaska's review under the CZMA federal consistency provision." In fact, many OCS activities do not require an EIS, such as approval of seismic surveys and exploration drilling projects. Both of these activities have the potential to disrupt subsistence uses and resources. For example, the ACMP review of a highly-controversial proposal to site a drilling rig on an ice island was initiated before the preparation of the environmental assessment and before a third-party engineering review revealed the extent of the ice forces in the area.

Implementation

Section 5.2.3.2.5 reviews changes to ACMP implementation and concludes that changes to 11 AAC 114.280 are insignificant and will not be reviewed for impacts. This approach ignores the cumulative effects of other changes to the implementation of the ACMP. An analysis of the cumulative effects of the other changes to the implementation of the ACMP should be included in the final EIS.

Plan Review Process

Section 5.2.3.3 states that the changes to the plan review process were only procedural and not significant in terms of effects. The final EIS should include a more thorough analysis of the changes to this section, including potential effects of elimination of the Coastal Policy Council (CPC), a body with representation of coastal districts. Under the previous ACMP, the CPC approved coastal district plans.

District Plan Guidance

District Participation: Section 7.5 acknowledges that changes to the ACMP will result in a loss of ability for coastal districts to participate in ACMP. It states that there is no requirement in the CZMA for local government implementation. This fact should not be an excuse for not doing an adequate analysis of the environmental effects of diminished coastal district participation. This section also states "there continues to be public notice

and opportunity for input during the public comment and public hearing procedures . . .” As discussed earlier in this letter, opportunities for public involvement have been diminished. While the DEIS states that boroughs can use their Title 29 authorities to develop zoning and land use regulations, it does not acknowledge that coastal resource service areas do not have this option.

Special Management Areas and AMSAs: Sections 5.2.3.4 and 7.5.3 address changes to Special Management Plans and Areas Meriting Special Attention (AMSA) provisions. These sections incorrectly assert that there are no structural changes to planning criteria for special areas. While a district may still establish these special areas, it may only establish enforceable policies that meet the requirements of 11 AAC 114.270. For example, 11 AAC 114.400 allows establishment of AMSAs for coastal *resources* important for subsistence use, but ADNRR maintains that districts could not establish policies for subsistence resources. Also, policies addressing subsistence uses are severely restricted. Similarly, 11 AAC 114.400 provides for establishment of a wetlands management plan, yet ADNRR has informed the Juneau coastal district that its wetlands plan will no longer be applicable for ACMP purposes.

The DEIS states in Section 7.5.3.1 that the “SAMP process should remain an important incentive for coastal district and coastal resource area governments to participate.” This statement fails to recognize that restrictions on enforceable policies reduce the attractiveness of establishing SAMPs.

The final EIS should include a thorough analysis of how restrictions for district enforceable policies will affect the ability of the State to meet requirements for special areas. Specifically, because only districts may establish special areas, restrictions on enforceable policies will limit the statutory provisions (AS 46.40.040(5) and AS 46.40.210(1)) and regulatory provisions (11 AAC 114.400 – 430). The analysis should analyze enforceable policies that will no longer be approvable and quantify which AMSAs will likely sunset.

GOVERNMENT-TO-GOVERNMENT CONSULTATION

Section 9.5 of the DEIS discusses coordination with tribal governments as required by presidential Executive Order (EO) 3084. In this section, OCRM states that it will establish a schedule to meet with Native governments during the fall of 2005. Because OCRM has already issued the DEIS with an agency preferred alternative, it is questionable whether this consultation will be meaningful and whether it meets the intent of the EO. Meaningful consultation requires an early effort, an education component, and the ability to respond to issues raised by tribal governments.

ENVIRONMENTAL JUSTICE

Chapter 8 of the DEIS addresses environmental justice issues, but the analysis does not appear to meet all of the requirements of EO 12898. Section 8.3 concludes that “any

policy changes that specifically and/or negatively target subsistence resources and their governance will have a corresponding effect on communities that are subject of Environmental Justice reviews.” Similarly, Section 8.4 concludes that there will likely be disproportionately high adverse economic and social impacts on minority and low income populations from the changes. EO 12898 and NOAA guidance on Environmental Justice require an analysis of the effects of the proposed federal action including “human health, economic and social effects on minority and low-income communities” (NOAA Administrative Order Series 216-6). The DEIS, however, does not indicate the specific nature of the effects to minority and low-income populations.

The DEIS does not appear to reflect information from research that is required in EO 12898 and NOAA’s proposed strategy to implement the EO. EO 12898 requires agencies to collect, maintain, and analyze information on patterns of subsistence consumption of fish, vegetation, and wildlife. While the DEIS contains a general discussion of subsistence patterns for the state as a whole, it does not address regional differences in the DEIS. For example, Section 6.2.7 of the DEIS reports that fish represent 60% by weight of the wild food harvested for subsistence. For the North Slope Borough, and perhaps other areas of Alaska, marine mammals and caribou are most important, and fish represent a small part of the edible pounds harvested.

Equally important is a lack of analysis of the how approval of the ACMP changes will affect subsistence resources and subsistence use patterns. NOAA’s proposed strategy to implement EO 12898 requires that NOAA conduct research activities on the effect of commercial fishing, habitat loss and pollution on subsistence activities. It requires a program that addresses habitat degradation and loss, contaminants effects, nutrient over-enrichment and other stresses on ecosystems, and research on cumulative environmental exposure.

The discussion uses census areas to identify where Native populations are higher than the statewide average. While use of census areas works for areas such as the North Slope Borough, this approach does not work well for all areas of the state. For example, both Kodiak and Haines have an overall Native population that is less than the statewide average, but individual areas within these areas have large Native populations.

It is unfortunate that OCRM did not make a more concerted effort to involve minority and low-income populations earlier in the process. The Council on Environmental Quality (CEQ) guidance on Environmental Justice and NEPA reviews outlines specific public participation procedures that should be implemented. This guidance also includes a section on mitigation measures that should be solicited by the federal agency and incorporated into the EIS. We appreciate OCRM’s efforts to hold a scoping meeting in Barrow, but we think more of an effort should have been made to involve Native communities throughout Alaska. Neither the scoping meetings, the State’s public review or the hearings scheduled for the DEIS included the ability for rural residents to participate in proceedings by “off-net” teleconferencing procedures commonly used in

Alaska. Low-income residents do not have resources to travel to one of the sites, and English is a second language for many Native people, especially elders.

At the end of Chapter 8, OCRM diminishes environmental justice concerns by stating “by disapproving the amendment, NOAA is likely to be viewed by some as having taken an action that has disproportionately high adverse impacts on minority and low-income populations’ self-government in the State of Alaska.” This statement does not elaborate who would likely have such a view.

The final EIS should include an analysis of how the preferred alternative will meet requirements of EO 12898 and NOAA and CEQ guidance on this issue. It should include a detailed analysis of how the changes will affect minority and low income populations, identify mitigation measures that would reduce these effects, and suggest a monitoring program to determine how the changes affect these populations, especially with respect to subsistence resources and uses. In addition to environmental effects, the analysis should address human health, economic and social effects.

CONCLUSION

In conclusion, we have determined that OCRM’s finding that the changes to the ACMP would have a neutral effect on physical environment is not substantiated by an adequate analysis and that the DEIS does not analyze all of the reasonably foreseeable effects of the proposed changes.

The final EIS should make a better connection between suggestions made during the scoping process and what was considered in the DEIS. Many of the issues identified during the scoping process were not addressed in the DEIS, and there was no explanation of why they were not addressed.

The description of the affected environment in Chapter 6 contains a wealth of information about Alaska. While we did not attempt to verify the accuracy of this information, we note that information sources were not always identified. For example the first 18 pages of the chapter cite only two references.

We request that OCRM complete a more complete analysis of the potential effects of the ACMP Amendment including the following matters.

- **Enforceable Policies:** A thorough review of enforceable policies that will be eliminated under the new program should be completed, including policies that will no longer be approvable and policies from district plans and AMSAs that will likely sunset. This analysis should include a review of comments by ADNR on the Public Hearing Drafts of district plans and a more thorough examination of restrictions on district policies stated in the Amendment. The analysis should also address the effects of the weakened statewide standards on coastal resources not covered by coastal districts.

- **Gaps Analysis:** A thorough analysis of state and federal environmental laws should be completed to determine what gaps will no longer be filled by enforceable policies. The specific effects of the loss of these policies should be analyzed.
- **Other States:** A comparison of Alaska's environmental laws to that of other states should be completed to determine the importance of the ACMP. The ACMP has been a big part of Alaska's environmental regulations, and as a result, Alaska has not enacted legislation that is common to other states.
- **Cumulative Impacts:** A more complete analysis of the cumulative impacts of all of the changes should be included in the final EIS.

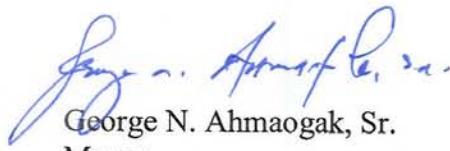
After this analysis has been completed, the criteria in Section 7.2 for evaluating the effects of approving or denying the ACMP amendment should be revisited. We believe additional criteria should be added to this section.

As recommended in the beginning of this letter, we believe an additional alternative is needed to comply with NEPA requirements. The new alternative should include partial approval of the proposed changes.

Lastly, we request that the comment period for the DEIS be extended until we have had an opportunity to review the answers to questions we have posed about OCS reviews. We understand the ADNIR is currently developing a response to these questions.

Again, we appreciate the opportunity to comment on the DEIS for the proposed changes to the ACMP. My staff is available to provide additional information related to our comments as OCRM completes the final EIS.

Sincerely,



George N. Ahmaogak, Sr.
Mayor

cc: Helen Bass, OCRM
Governor Frank Murkowski
Senator Ted Stevens
Senator Lisa Murkowski
Representative Don Young

Mr. Eldon Hout
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Senator Donny Olson, Alaska State Legislature
Representative Reggie Joule, Alaska State Legislature
Mike Menge, Commissioner, ADNR
Alaska Eskimo Whaling Commission
Rex Okakok, NSB Planning
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